
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA

§

versus

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CASE NO. 4:17-CR-41

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BRUCE ALLEN RUTHERFORD

§

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MEMORANDUM AND ORDER


Pending before the court is Defendant Bruce Allen Rutherford's ("Rutherford") Application to Proceed Without Prepayment of Fees (#122). On December 15, 2020, the court denied Rutherford's Motion to Dismiss Indictment (#119). On December 28, 2020, he filed a notice of appeal, which is pending before the United States Court of Appeals for the Fifth Circuit, No. 21-40021. In his present motion, Rutherford requests that the court allow him to appeal *in forma pauperis* ("IFP"). Having considered the motion, the record, and the applicable law, the court is of the opinion that the motion should be denied.

Under certain circumstances, the court may grant a party leave to proceed on appeal without prepaying or giving security for fees and costs. *See* 28 U.S.C. § 1915(a); FED. R. APP. P. 24(a). To proceed IFP, a party must submit an affidavit that includes a statement of all assets he possesses demonstrating his inability to prepay or give security for fees and that states the nature of the appeal and the affiant's belief that he is entitled to redress. 28 U.S.C. § 1915(a)(1). A prisoner who seeks to proceed IFP must also submit a certified copy of his trust fund account statement or institutional equivalent for the 6-month period immediately preceding the filing of the notice of appeal. *Id.* § 1915(a)(2). If granted leave to proceed IFP, a prisoner is still obligated to pay the full amount of the filing fee over time, when funds exist, through an initial partial filing fee and monthly installments withdrawn from the prisoner's account. *Id.* § 1915(b)(1), (2); *Hawes*

v. Stephens, 964 F.3d 412, 417 (5th Cir. 2020). A prisoner may proceed IFP on appeal only if he is economically eligible and presents a nonfrivolous issue. *See Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982); *accord United States v. Rutherford*, 831 F. App'x 713, 714 (5th Cir. 2020). An issue is not frivolous if it involves "legal points arguable on their merits." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983); *accord United States v. Castillo-Chavez*, 828 F. App'x 207, 207 (5th Cir. 2020).

As noted in the court's orders denying Rutherford's previous requests to appeal IFP, Rutherford has not demonstrated that he is indigent. As of November 4, 2020, Rutherford's financial data sheet, although not a certified copy as required, shows a balance of \$736.98, which is sufficient to pay the filing fee of \$505.00. Further, Rutherford does not present a nonfrivolous issue for appeal. Moreover, Rutherford failed to comply with the court's December 15, 2020, Order (#119), which barred him "from filing any future *pro se* motions, affidavits, or requests for relief in this court without the advance written permission of a judge of this court." Rutherford did not seek leave of this court to file his present motion. In accordance with the foregoing, Rutherford's Application to Proceed Without Prepayment of Fees (#122) is DENIED.

SIGNED at Beaumont, Texas, this 22nd day of January, 2021.

A handwritten signature in black ink, reading "Marcia A. Crone". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE